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82-439

SUPREME COURT OF THE UNITED STATES

October Term 1982

No. ____

RUSSELL HARDY, Sr. et al

Appellant

v.

HOUSING MANAGEMENT COMPANY ET AL

Appellees

CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

APPENDIX

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AMENDMENT XIV TO CONSTITUTION OF THE UNITED STATES

Section 1. All persons born and naturqlized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citi-,ens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

ARTICLE XI-A, CONSTITUTION OF MARYLAND.

Section 3. . . . From and after the adoption of a charter by the City of Baltimore, or any County of this State, as hereinbefore provided . . . the County Council of said County, subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws of said City or County including the power to repeal or amend local laws of said City or County enacted by the General Assembly, upon all matters covered by the express powers granted as above provided; provided that nothing herein contained shall be construed to authorize or empower the County Council of any County in this State to enact laws or regulations for any incorporated town, village, or municipality in said County, on any matter covered by the powers granted to said town, village, or municipality by the Act incorporating it, or any subsequent Act or Acts amendatory thereto. . . .

ARTICLE XI-E, CONSTITUTION OF MARYLAND

Section 3. HOME RULE.

Any such municipal corporation, now existing or hereafter created, shall have the power and authority, (a) to amend or repeal an existing charter or local laws relating to the incorporation, organization, government, or affairs of

said municipal corporation heretofore enacted by the General Assembly of Maryland, and (b) to adopt a new charter, and to amend or repeal any charter adopted under the provisions of this Article. (Ann. Code of Maryland, 1957, Vol. 9A, p. 326)

PROCEEDINGS IN THE CIRCUIT COURT

January 16, 1981

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY
MARYLAND

Russell Hardy, Sr.
Mildred M. Hardy
Plaintiffs,
vs. Law No. 56031
Housing Management
Company
Defendant

EXCERPT OF PROCEEDINGS

Before: The Honorable Phillip M. Fairbanks, judge, presiding.

THE COURT: All right. Mr. Hardy, you have an interesting and in some respects to me at least an appealing argument. I am not an advocate of extension of powers of municipalities including the County or the City or anything else. I am very much in the minority in that view, because the Court of Appeals has let counties and municipalities run pretty much as they wish, and I suspect that if this issue ever went to the

Court of Appeals, they would hold without much question that the City of Gaithersburg has the authority to impose rent control if it wishes to, and the mere fact that they don't set it out in those very words in view of other provisions in the charter, would not prevent them constitutional from exercising the authority to impose rent control.

So, on that basis I would have to sustain the demurrer, and I am afraid I will have to sustain it without leave to amend, because I don't think you can amend in view of the posture of the matter to improve your position any more than that or put it in any better posture than it is now.

Passing that for a moment, and assuming let's say for the purposes of this argument that you are correct, and that there is no authority in the City of Gaithersburg, I would be disposed to rule if I had to reach that point, that you have fore closed your remedy in this proceeding by not having gone to the Court by appeal of the decision of the County Rent Control people to give you relief, the basis of that de-

cision being that they had no jurisdiction for the very reason we are arguing here today; that is that the City of Gaithersburg has authority to or can exercise rent control, therefore, the point is, it was available to you to raise by appeal from the failure of the County to give you relief, and you didn't do so.

Accordingly, I will sustain the demurrer of the Management Company without leave to amend.

CERTIFICATE OF REPORTER

I, Debranne M. Leesman, being an Official Reporter, Montgomery County, Maryland, do hereby certify that I did report the foregoing proceedings, and that the pages numbered 2 thru 3, inclusive, contains a full, true and correct transcription of my notes taken therein to the best of my ability and belief.

OPINION OF COURT OF APPEALS OF MD.

IN THE COURT OF APPEALS OF MARYLAND
No. 23
September Term 1981

Russell Hardy, Sr., et ux.
v.
Housing Management Company et al.

Murphy, C. J.	Cole
Smith	Davidson
Digges	Rodowsky
Eldridge	

Opinion by Eldridge, J.
Murphy, C. J., concurs in the result

Filed: May 7, 1982

In this case we are asked to decide whether an article of the Montgomery County Code relating to rent control applies within the City of Gaithersburg, an incorporated municipality located within Montgomery County.

Several tenants of apartments located in Gaithersburg, and managed by Housing Management Co., brought an action for damages against Housing Management in the Circuit Court for Montgomery County. The tenants claimed that during their tenancies, from 1971 to 1978, Housing Management received numerous rent increases in violation of Article VI of Article VI of the Montgomery County Landlord-Tenant Relations Act, Montgomery County Code (1972, 1977 Repl. Vol., 1980 Cum Supp.), § 29-47 et seq.

Housing Management demurred on the ground that the County Act did not apply within the city. Thereafter, the City of Gaithersburg's motion to intervene on the side of Housing Management was granted, and the city filed a memorandum in support of the demurr-

er. After an oral hearing, the trial judge sustained the demurrer without leave to amend.

The tenants then took an appeal to the Court of Special Appeals. Before any proceedings took place in the intermediate appellate court, we granted a petition for certiorari filed by Housing Management and the City of Gaithersburg.

Section 29-75(a) of the Montgomery County Code (1972, 1977 repl. vol.), sets forth the applicability of the rent control article:

> "This chapter or this article shall be effective throughout the county except in any incorporated town, village or other municipality which by law has authority to enact a law on the same subjects as covered by the various articles and sections of this chapter. If any such incorporated town, village or other municipality shall adopt this chapter or any article of it and requests the county to enforce the provisions thereof within its corporate limits, the county shall thereafter administer and enforce the same within such incorporated town, village or municipality. The county executive is authorized to enter into agreements with such incorporated town, village or municipality to collect the administrative costs of implementation from such municipalities.

Thus, the county rent control law, by its

own language, is not effective in any incorporated municipality which has authority to enact similar laws, whether or not it has actually exercised such authority. The wuestion in this case is, therefore, whether the City of Gaithersburg has authority to regulate landlord-tenant relations.

It is well established under our decisions that a municipal corporation has but limited authority. This Court has often quoted 1 J. Dillon, Municipal Corporations § 237 (5th ed. 1911) as follows:

> "(A) municipal corporation . . . can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation -- not simply convenient, but indispensable."

See New Carrolton v. Belsinger Signs, 266 Md. 229, 237, 292 A.2d 648 (1972); McRobie v. Town of Westernport, 260 Md. 464, 272 A.2d 655 (1971); Montgomery Co. v. Met. District, 202 Md. 293, 304, 96 A.2d 353 (1953).

In each of those cases, the Court held that the municipal corporation involved had acted beyond the scope of its express or im-

plied grant of authority.

The charter of the City of Gaithersburg, however, has a clause which differentiates this case from those cited above. Section 71-19(47) of the city charter states:

> "In addition to all powers granted to the council by this Charter or any other provision of law, the council may exercise any power or perform any function which is not now or hereafter denied to it by the Constitution of Maryland, this Charter, or any applicable law passed by the General Assembly of Maryland. The enumeration of powers and functions in this Charter or elsewhere shall not be deemed to limit the power and authority granted by this paragraph. 71-19(47)."

It is recognized that, if a municipal charter expressly grants general authority such as that quoted above, the grant effectively extends the municipality's authority beyond the specific powers otherwise set forth in the charter. Dillon, supra at §§ 585. 586, states that such a general grant is permissible, and that while it "does not enlarge or annul the power conferred by the special provisions in relation to their various subject matters, (it) gives authority to pass

by-laws, reasonable in their character, upon all other matters within the scope of their municipal authority, and not repugnant to the Constitution and general laws of the State." See also 2 and 6 E. McQuillin, Municipal Corporations, §§ 10.23, 10.24, 24.43, 24.44 and 24.45 (R. Rickhoff & M. Meier, 3d ed. 1979).

In light of this Court's decision in County Council v. Investors Funding, 270 Md. 403, 312 A.2d 225 (1973), the grant of authority in § 71-19(47) of the Gaithersburg Charter encompasses the power to enact rent control provisions similar to those enacted by Montgomery County. Since the county rent control provisions by their own terms do not apply within municipalities having such powers, the county provisions do not apply within the City of Gaithersburg.[1]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. RESPONDENTS TO PAY COSTS

[1]Because the county rent control provisions expressly do not apply in municipalities which have the power to enact similar measures, the issues involved in Town of Forest Heights v. Frank, 291 Md. 331, 435, A.2d 425 (1981), are not presented in this case .

DENIAL OF MOTION FOR RECONSIDERATION

COURT OF APPEALS

Of Maryland

Annapolis, Md. 21401

June 4, 1982

Russell Hardy, Sr., Esquire,
Attorney at Law
1131 University Boulevard West
Silver Spring, Maryland 20902

Re: Russell Hardy, Sr. et ux. v. Housing Management Company et al.
No. 23 - September Term, 1981

Dear Mr. Hardy:

This is to advise that the motion for reconsideration filed in the above entitled case has been denied by the Court this date.

Very truly yours,

JAMES H. NORRIS, Jr.,

Clerk

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